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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JENNIFER OSBELT,

Plaintiff,

V.

DAVID D. McDONALD, DONNA K.
McDONALD, and DOES 1 THROUGH 10,
inclusive.

Defendants.

DAVID D. McDONALD; DONNA K.
McDONALD; NATIONAL EXPERT
WITNESS NETWORK, a California Limited
Liability Company; TECHNOLOGY CLE, a
California Limited Liability Company,

Cross-Complainants,

V.

JENNIFER OSBELT, individually and doing business as PALO ALTO TECHNICAL, and DOES 1-10, inclusive,

Cross-Defendants.

Case No. CV 08-0534 JL

**PLAINTIFF'S AMENDED NOTICE OF
MOTION AND MOTION FOR REMAND
TO STATE COURT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: May 21, 2008
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Phyllis J. Hamilton



LAW OFFICES
**COTCHETT,
PITRE &
McCarthy**

**PLAINTIFF'S AMENDED NOTICE OF MOTION AND MOTION FOR REMAND TO STATE COURT;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

1 **AMENDED NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE THAT on May 21, 2008 at 9:00 a.m., or as soon thereafter as
 4 the matter may be heard, before the Honorable Phyllis J. Hamilton, in Courtroom 3 of the United
 5 States District Court, Northern District of California, San Francisco Division, 450 Golden Gate
 6 Avenue, San Francisco, Plaintiff and Counter-Defendant Jennifer Osbelt will move the Court for
 7 an order remanding this action to the Superior Court of the State of California, County of San
 8 Mateo, where the action and counter-claim was originally filed. Further, the plaintiff seeks costs
 9 and attorneys fees associated with the motion for remand.

10 This motion for remand is brought pursuant to 28 U.S.C. § 1447(c) and governing case
 11 law, on the basis that defendants and counter-plaintiffs National Expert Witness Network, David
 12 McDonald and Donna McDonald (“Defendants”) wrongfully removed this case from state court
 13 to federal court, since the federal court does not have jurisdiction due to the action lacking a
 14 federal question.

15 Defendants’ claim that the action involves an ERISA action is incorrect. The face of
 16 Plaintiff’s complaint does not allege an ERISA cause of action or any federal question.
 17 Furthermore, Plaintiff’s counsel does not seek a claim under any ERISA related cause of action.
 18 This motion is based upon this notice of motion and motion, the memorandum of points and
 19 authorities, the Declaration of Ara Jabagchourian, any papers filed in reply, the arguments of
 20 counsel, and all papers and records on file in this matter.

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RELIEF SOUGHT

Plaintiff Jennifer Osbelt (hereinafter “Plaintiff” or “Osbelt”) seeks to remand this case, originally filed and pending in the State of California Superior Court for the County of San Mateo. This action must be remanded because Defendants removed the action to this Court without proper subject matter jurisdiction, and the District Court, therefore, lacks jurisdiction over this matter. Furthermore, the Plaintiff seeks costs and attorneys fees pursuant to 28 U.S.C. §1447(c).

DATED: April 7, 2008

COTCHETT, PITRE & McCARTHY

By: /s/ Ara Jabagchourian
ARA JABAGCHOURIAN
Attorneys for Plaintiff